IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1752 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DY EXECUTIVE ENGINEER (MECHNICAL)

Versus

SUKHABHAI GANDABHAI

Appearance:

MS SEJAL K MANDAVIA for Petitioner

M/S THAKKAR ASSOC. for Respondent No. 1, 3

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 04/08/2000

ORAL JUDGEMENT

Learned advocate Ms. Mandavia is appearing for the petitioner. Learned advocate Mr. D.M. Thakkar is appearing for M/s. Thakkar Associates for respondent No.

1 to 3. Rule, Mr.D. M. Thakker Learned Advocate on behalf of respondents waives the service of rule with the consent of both the Learned Advocates, the matter has been taken up for final hearing today. In the present petition, the award passed by the Labour Court, Surat in Reference No.247, 248 and 265 of 1985 dated 30th September, 1998 has been challenged wherein, the Labour Court, Surat has granted reinstatement with continuity of service with full back wages of interim period. The respondents were appointed as a Seaman in the year 1980 and remained in service up to 6th August, 1983 and their service were terminated on 6th August, 1983. The said termination orders were challenged by the respondents-workmen before the Labour Court, Surat in Reference No. 247, 248 and 265 of 1985. The statement of claim was filed by the respondents-workmen and reply was submitted by the petitioner. Ms. Mandavia, the learned advocate appearing for the petitioner has contended that the labour court has committed error in coming to the conclusion that each workman has completed 240 days' service during one year. She has also submitted that the daily wagers are not entitled to the benefit of sec.25F of the Industrial Disputes Act, 1947. She has also submitted that in case of daily wager, on account of day-to-day appointment, the provisions of sec.2(oo)(bb) are attracted and, therefore, sec.25F is not applicable because the termination of daily wager does not amount to retrenchment within the meaning of section 2(oo) of the Industrial Disputes Act, 1947. The contentions raised by Ms. Mandavia were examined by the labour court and the labour court has come to the conclusion that the services of the respondents were terminated on 6th August, 1983 and the respondents workmen were completing period of three years' service, more than 770 days' continuous service and, therefore, in view of such findings, the labour court has held that sec.25F was applicable. Before the labour court, the respondent workman has filed affidavit and the petitioner has examined the said workman. Thereafter, one Assistant Engineer was examined by the petitioner before the labour court. The labour court has considered the evidence on record and has found that each workman has completed 240 days' continuous service within a period of one year. The labour court has also considered oral the evidence of the Assistant Engineer who was examined by the petitioner. After appreciating the evidence brought before it, the labour court has come to the conclusion that the said witness examined by the petitioner before it was having no personal knowledge as regards the matter and, therefore, said evidence is not helpful to the petitioner. The labour court has also considered the

contention as regards provisions of section 2(oo) (bb) which was raised by the petitioner and the labour court has come to the conclusion that such termination shall amount to retrenchment and the provisions of sec.2(oo)(bb) shall not be attracted and the same is not proved by the petitioner and, therefore, while terminating the services of each workman, indisputably, the petitioner has not followed the mandatory provisions of section 25F of the Industrial Disputes Act, 1947 and, therefore, the orders of termination were set aside by the labour court and the reinstatement was granted with continuity of service with full back wages for the intervening period.

As regards the contention of Ms. Mandavia that the daily wagers are not entitled to the benefits of the provisions of section 25F of the Industrial Disputes Act, 1947 and the said provisions are not applicable to such daily wagers, the view taken by the Hon'ble apex court in case of MCD versus Pravinkumar Jain and Others reported in 1998 (II) LLJ 674 is required to be appreciated. In the said decision, the apex court has held that the daily rated workmen discharged from service without complying with the provisions of section 25F of the Act or without conducting inquiry to prove the charge of misconduct was improper. In the said case, the order of discharge was set aside by the labour court and reinstatement was ordered and other benefits with full back wages were also granted. The High Court dismissed the writ petition filed by the Management. In SLP against the said order before the apex court, the order of the High Court was maintained but quantum of back wages was reduced to 50% since the workmen succeeded solely because of the improper procedure followed by the Management.

The apex court has also considered the very same question in the case of Ratan Sing versus Union of India, 1997 (II) SCC 396 and it has been held that the provisions of section 25F of the ID Act are applicable to daily rated employees also. There is one decision of the Madhya Pradesh High Court in case of MP Textile Corporation versus Krishnakant Pancholi and others reported in 1998 (80) FLR 84 delivered by Hon'ble Mr. Justice D.M. Dharmadhikari (as His Lordships then were) wherein it has been held that the provisions of section 25F of the ID Act are applicable to all categories of employees including those employed on daily rated basis or for seasonal work of intermittent nature. All categories of employees putting in more than one year's service are entitled to the payment of retrenchment

compensation as a condition precedent for their retrenchment under sec. 25F of the ID Act. In view of the principles laid down in the aforesaid decisions, the contention of Ms. Mandavia cannot be accepted and considering the definition of the term 'workman' under sec. 2(s) of the Act also, whether he is daily rated or casual or part time, is covered in such definition of the workman and therefore, the contention cannot be accepted. The provisions of sec. 25F are applicable to such employees.

Next contention of Ms. Mandavia is that all these workmen were working as daily wagers and, therefore, the provisions of sec. 2(oo)(bb) are applicable because daily wagers are appointed on day to day basis and, therefore, their termination does not amount to retrenchment. Said contention cannot be accepted on the ground that in the present case, the termination of each workman is dated 6th August, 1983. The provisions of sec. 2(oo)(bb) was inserted in the Statute Book by amending the section on 18th August, 1984. Prior to 18th August, 1984, there was no provisions of sec.2(oo)(bb) in the Statute Book and therefore, such amendment cannot have any retrospective effect as held by this court in case of Bharat Electricals Ltd. versus RV Krishna Rao reported in 1989(2) GLH page 1. In the said decision, it has been held by the division bench that it is obvious that the legislature while enacting the said provision has not expressly made it retrospective. In the said decision, the division bench has also held that it is indeed well settled that once the action of the management is held to be violative of sec. 25F of the Act, the action must be treated to be void with the result that the workman has to be held to have continued in service.

The third contention raised by Ms. Mandavia that the each workman has not completed 240 days' continuous service is not correct and the same is contrary to the record also and, as such, cannot be accepted on the ground that before the labour court, each workman has filed affidavit and each workman was cross examined by the petitioner. Considering the evidence of the workman adduced before the labour court, there was positive statement made by the workman before the labour court and the said statement was cross examined in detail by the petitioner and thereafter, the labour court has found that in all, each workman has completed during the period of three years more than 770 days' continuous service and has also come to the conclusion that each workman has proved by deposition before the labour court that they

had completed 240 days' continuous service within the period of one year. As against that, the petitioner had examined one Assistant Engineer before the labour court who has given the oral evidence without seeing pay slip, muster roll of the workmen. The labour court has found that the said witness examined on behalf of the petitioner was having no personal knowledge relating to the workman. He was also not aware when the workmen were discharged and when they were employed. Therefore, the labour court, after appreciating the oral evidence adduced before it by the workmen as well as the witness examined by the petitioner, concluded that the petitioner has not disproved the fact that the workmen have not completed 240 days' continuous service within 12 months preceding the date of termination The labour court also found that the evidence of the workmen has remained unchallenged and the same was accepted by the labour court. The labour court has arrived at such findings after appreciating the facts and circumstances of the case and also after appreciating the evidence produced before it. As per the settled law, such findings of fact cannot be disturbed unless there is any material irregularity committed by the court below. Such findings cannot be disturbed unless there is any material produced on record to the effect that such findings of fact recorded by the labour court are contrary to the evidence on record. Therefore, such findings of fact recorded by the labour court are legal and valid and the same cannot be disturbed in exercise of powers under Art. 226 and/or 227 of the Constitution of India. Therefore, this contention of Ms. Mandavia is also rejected.

In view of these observations, the labour court has rightly taken the view that the termination order passed by the petitioner is violative of the provisions of section 25F of the ID Act and the orders of termination were rightly set aside by the labour court. The impugned award based on such findings of fact does not require any interference of this court while exercising the powers under Article 226 and/or 227 of the Constitution of India since this court cannot act as an appellate court and cannot reappreciate the oral evidence which was led before the labour court and which was appreciated by the labour court. Therefore, the award impugned herein does not require any interference by this court.

Now question is required to be examined so far relating to the question of granting full back-wages of interim period as directed by the Labour Court. In the present case the termination was dated 6th August, 1983.

The reference made in the year of 1985 and date of award is 30th September, 1998. The net result is that the respondents who have worked about three years service with the petitioner, are entitled the salary of 16 years without worked in between. Whether in such circumstances, the full back wages can be granted or not. The reference is pending before the Labour Court for final decision up to twelve years. Petitioner is a public body and State Authority. Respondents were not a permanent workman. Considering these all aspects in such cases, the Apex Court has considered similar situation in case of H.M.T. Limited v. The Labour Court Ernakulam and Others reported in 1994(2) C.L.R. page-22. The Apex Court has observed that we don't find that any error has been committed by the High Court in up holding the award of the Labour Court reinstating the workmen. However, we find that the dismissal of the workmen were on July 30, 1979 and till date more than 14 years have elapsed. It is not accepted that no party should suffer on account of the delay in the decision by the Court. Taking all facts into consideration, we are of the view that it would meet the ends of justice in the present case if instead of full back wages, the workmen concerned are given 60% back wages till they are reinstated. Similarly, recently such question has been examined by the Apex Court in the case of Management of M.C.D. Vs. Premchand Gupta reported in AIR 2000 S.C. Page 454. The Apex Court has observed that the reason for not granting full back wages from the date of his termination i.e. 29th April, 1966 till the actual reinstatement pursuant to the present order can now be indicated. Firstly, for no fault of the contesting parties, the litigation has lingered for more than 3 decades. To saddle the appellant corporation and its Exchequer which is meant for public benefit with full back wages for the entire period would be too harsh to the appellant Corporation. There is delay in disposal of cases in the Courts, that has created this unfortunate situation for both the sides. The respondent workman is also not at fault as he was clamouring for justice for all these years. However, this delay in courts proceedings for no fault of either sides, permits us not to burden the appellant Corporation being a public body, with full back wages for the entire period of respondent workman unemployment especially when no fault of either side actual work could not be taken from the respondents workmen by the appellant Corporation. It is true that the respondents workmen was always willing to work but he could not be permitted to work so long as the termination order stood against them. All these factors together point in the direction of not saddling the appellant Corporation, a public body with the burden of entire full

back wages to be granted to the respondents workmen after the passage of 33 years since their order of termination. The second reason is that the respondents workmen for all these years could not have remained totally unemployed though there is not clear evidence that they were gainfully employed and were so well off that they should be denied complete back wages but keeping in view the fact that for all these long years fortunately the respondents workmen had survived and has still 2 more years to reach the age of superannuation as we are told that not granting of them full back wages on the peculiar facts and circumstances of this case, would meet the end of justice. The appellant Corporation shall reinstate the respondent workman with continuity of service within 8 weeks from today and still also pay 50% back wages from the date of termination till their actual reinstatement in service of the appellant Corporation with continuity of service.

In light of the observations made by the Apex Court in two above referred cases, in the present case the termination of respondents workmen was 6th August, 1983, they completed more than 3 years service. They were not a permanent employee. He raised dispute against the termination after the period of 2 years. The petitioner is a public body and state authority. The 12 years period has been passed in taking decision by the Labour Court in reference. Considering all these aspects and observations made by the Apex Court, if the back wages for the period from the date of termination to date of reference is not granted to the respondents workmen because of inaction on the part of the respondents workmen not to raise dispute immediately after the termination, therefore respondents workmen are not entitled to back wages from the date of termination i.e. 6th August, 1983 to the date of reference and respondents workmen are entitled to 60% back wages from the date of reference to 30th September, 1998, date of award and full back wages from the date of award till the date of actual reinstatement. If such direction will be given in respect to the back wages of interim period, which will meet the ends of justice between the parties.

Therefore, the award passed by the Labour Court, Surat in reference No.247, 248 and 265 of 1985 dated 30th September, 1998 is modified qua back-wages as under confirming the direction of granting reinstatement with continuity of service.

The respondents-workmen are not entitled for any back-wages from the date of termination 6th August, 1983

to date of reference and entitled to 60% back-wages from the date of reference till the date of award 30th September, 1998 and full wages from date of award 30th September, 1998 till the date of actual reinstatement. Therefore, the award of granting full back wages by the Labour Court is modified as above.

Therefore, present petition is partly allowed. Rule made absolute to that extent and it is directed to the petitioner to reinstate the respondents-workmen with continuity of service with all consequential benefits as if, respondents-workmen were deemed to be in service through out within a period of six weeks from the date of receiving the certified copy of this order. It is further directed that the petitioner to pay 60% back wages to the respondents-workmen from the date of reference till the date of award i.e. 30th September, 1998 and it is further directed to pay full wages to the respondents-workmen from the date of award i.e. 30th September, 1998 till the date of actual reinstatement within a period of eight weeks from the date of receiving certified copy of this order. It is further declared that respondents-workmen are not entitled for any amount of back wages from the date of termination i.e. 6th August, 1983 till the date of reference.

In view of the aforesaid observation and direction, the present petition is partly allowed. Rule made absolute to that extent. No order as to costs.

Date : 04.08.2000. (H.K.RATHOD,J.)

Vyas